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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Iraq, submitted by the Special Rapporteur, Mr. Max van der Stoel, in accordance with Commission resolution 1997/60

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CONTENTS

		Paragraphs	Page
Introduction		1 - 4	3
I.	ACTIVITIES OF THE SPECIAL RAPPORTEUR	5 - 8	4
II.	CIVIL AND POLITICAL RIGHTS	9 - 41	5
	A. Summary, arbitrary and extrajudicial executions	10 - 18	5
	B. Forced displacement	19 - 24	7
	C. Iraq's compliance with the International Covenant on Civil and Political Rights	25 - 41	9
III.	ECONOMIC AND SOCIAL RIGHTS	42	13
	A. The rights to food and health care	42 - 51	13
	B. The rights of the child	52 - 57	15
	C. Iraq and the International Covenant on Economic, Social and Cultural Rights	58 - 67	16
	D. Iraq's responsibilities	68 - 77	18
IV.	CONCLUSIONS AND RECOMMENDATIONS	78	20
	A. Conclusions	78 - 84	20
	B. Recommendations	85 - 88	21

Introduction

1. The Special Rapporteur has referred in detail to the terms of his mandate in, inter alia, the introductions to his five reports to the Commission on Human Rights (E/CN.4/1992/31, paras. 1-17; E/CN.4/1993/45, paras. 1-5; E/CN.4/1994/58, paras. 1-2; E/CN.4/1995/56, paras. 1-3; E/CN.4/1996/61, paras. 2-3 and E/CN.4/1997/57, paras. 1-6); additional references have been made in the introductions to most of his reports to the General Assembly. There was no substantive change to his mandate in the last year.

2. With regard to specific violations, the General Assembly, in paragraph 2 of its most recent resolution, 52/141 of 12 December 1997, strongly condemned "the massive and extremely grave violations of human rights and of international humanitarian law by the Government of Iraq, resulting in an all-pervasive repression and oppression sustained by broad-based discrimination and widespread terror" and mentioned, in particular: "suppression of freedom of thought, expression, religion, information, association, assembly and movement through fear of arrest, imprisonment and other sanctions, including the death penalty; summary and arbitrary executions, including political killings, enforced or involuntary disappearances, routinely practised arbitrary arrests and detention and consistent and routine failure to respect due process and the rule of law; widespread, systematic torture in its most cruel forms, and the enactment and implementation of decrees prescribing cruel and inhuman punishment, namely mutilation, as a penalty for offences and diversion of medical care services for such mutilations.

3. In paragraph 3 of the same resolution, the General Assembly called upon the Government of Iraq, inter alia:

> "(a) To abide by its freely undertaken obligations under international human rights treaties and international humanitarian law and to respect and ensure the rights of all individuals, irrespective of their origin, ethnicity, gender or religion, within its territory and subject to its jurisdiction;
>
> "(b) To bring the actions of its military and security forces into conformity with the standards of international law, in particular those of the International Covenant on Civil and Political Rights;
>
> "(c) To cooperate with United Nations human rights mechanisms, in particular by receiving a return visit by the Special Rapporteur to Iraq and allowing the stationing of human rights monitors throughout Iraq pursuant to the relevant resolutions of the General Assembly and the Commission on Human Rights;
>
> "...
>
> "(g) To cooperate with the Tripartite Commission to establish the whereabouts and resolve the fate of the remaining several hundred missing persons, including prisoners of war, Kuwaiti nationals and third-country nationals victims of the illegal Iraqi occupation of

Kuwait, to cooperate with the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights for that purpose, and to pay compensation to the families of those who died or disappeared in the custody of the Iraqi authorities, through the mechanism established by the Security Council in resolution 692 (1991) of 20 May 1991;

"...

"(l) To ensure equitable distribution without discrimination to the Iraqi population of the humanitarian supplies purchased with the proceeds of Iraqi oil, in implementation of Security Council resolutions 986 (1995), 1111 (1997) and 1129 (1997) and the memorandum of understanding with the Secretary-General of May 1996 on this issue, and to cooperate with international humanitarian agencies for the provision without discrimination of relief to those in need throughout Iraq;

"...

"(n) To continue to cooperate in the implementation of Security Council resolutions 986 (1995) and 1111 (1997) and to continue to facilitate the work of United Nations humanitarian personnel in Iraq by ensuring the free and unobstructed movement of observers throughout the country".

4. The present report is submitted pursuant to paragraph 4 of Commission on Human Rights resolution 1997/60 of 16 April 1997. An interim report was submitted, pursuant to the same resolution, to the fifty-second session of the General Assembly (A/52/476 of 15 October 1997). The Special Rapporteur intends the present report to be read in conjunction with his interim report to the General Assembly.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

5. Since his visit in January 1992 and despite the request, renewed in the above-mentioned resolutions of the General Assembly and the Commission on Human Rights, that the Government of Iraq cooperate with human rights mechanisms, in particular by receiving a return visit of the Special Rapporteur to Iraq and allowing the stationing of human rights monitors throughout the country, the Special Rapporteur has not yet received an invitation for a return visit, and the Government of Iraq has not altered its repeated refusal to deny the stationing of human rights monitors in the country.

6. Notwithstanding the persistent absence of cooperation on the part of the Government of Iraq, the Special Rapporteur continues to receive much assistance and information from governmental, intergovernmental and non-governmental sources, and by sending human rights monitors to neighbouring countries he has also received information from individuals connected in one way or another with the situation in Iraq. He has also received several well-documented reports describing the situation in Iraq, particularly in relation to the matters over which the General Assembly and the Commission on Human Rights have expressed concern.

7. On 15 October 1997, the Special Rapporteur submitted an interim report (A/52/476) to the General Assembly at its fifty-second session. In the report, the Special Rapporteur described violations of civil and political rights in Iraq and the general humanitarian situation. He concluded that there has been essentially no improvement in the situation of human rights in Iraq, and that the absence of respect for the rights pertaining to democratic governance is at the root of all the major violations of human rights in Iraq insofar as that absence implies a structure of power which is autocratic and accountable only to itself, thus inherently resting on the denial and repression of fundamental rights. The Special Rapporteur noted with particular concern that extrajudicial, summary or arbitrary executions and the practice of torture continue to occur in Iraq and concluded that there is no freedom of thought, opinion, expression or association. As concerns the humanitarian situation in Iraq, the Special Rapporteur noted that the Government of Iraq had begun to cooperate with the United Nations in the implementation of Security Council resolutions 986 (1995) and 1111 (1997). Nevertheless, the Special Rapporteur emphasized again the Government's responsibility to take all necessary action to ensure the full realization of the rights to food and health care for all its citizens, without discrimination of any kind.

8. In his continuing effort to obtain the most accurate and up-to-date information on the situation of human rights in Iraq, the Special Rapporteur sent a team of two human rights officers to Turkey in February 1998 to receive testimonies and other information from refugees and other persons of interest arriving from Iraq. United Nations human rights officers continue to be sent to such places, where information may be received from persons claiming to have suffered or to have witnessed violations of human rights perpetrated by the Government of Iraq.

II. CIVIL AND POLITICAL RIGHTS

9. The Special Rapporteur has, especially since August 1997, received numerous allegations of violations of civil and political rights perpetrated by the Government of Iraq. Reports of large-scale executions in Iraqi prisons as well as violations of the rights of persons belonging to minorities have alarmed both the Special Rapporteur and the United Nations Human Rights Committee which, on 19 November 1997, issued its concluding observations and recommendations on the fourth periodic report submitted by Iraq under article 40 of the International Covenant on Civil and Political Rights (CCPR/C/79/Add.84) as referred to below.

A. Summary, arbitrary and extrajudicial executions

10. In his last report to the General Assembly (A/52/476), the Special Rapporteur reported on allegations related to an execution campaign taking place in Abu Ghraib prison in spring 1997. Since then, the Special Rapporteur has continued to receive similar allegations from several sources. Supporting these allegations, numerous lists of named executed prisoners were made available to the Special Rapporteur.

11. Faced with the gravity of these allegations, the Special Rapporteur on the situation of human rights in Iraq together with the Special Rapporteur on

extrajudicial, summary or arbitrary executions of the Commission on Human Rights addressed a letter dated 29 December 1997 to the Iraqi Minister for Foreign Affairs requesting information concerning the above-mentioned allegations, in particular a list of the names of the persons executed in Iraq during the months of November/December 1997 as well as those awaiting execution, including the charges for which they had been sentenced. The Special Rapporteur notes with concern that no response from the Government of Iraq has been received to date.

12. According to the information gathered by the Special Rapporteur, there is strong evidence that hundreds of prisoners have been executed in Abu Ghraib and Radwaniyah prisons since August 1997. Moreover, the executions are said to have increased in number in November and December, subsequent to a visit by Qusay Saddam Hussein, head of the Special Security Organization, to Abu Ghraib prison on 18 November 1997. The so-called "Prison Cleansing Campaign" which followed is said to have involved detainees either sentenced to death or condemned to 15 years of detention and over. It was reported that the executions were carried out by shooting, hanging or electrocution, with relatives of the executed having to pay the value of the bullet used for the executions in order to recover the bodies. Some of the bodies returned to their respective families were said to have presented signs of torture.

13. As previously reported by the Special Rapporteur, membership in certain political parties is specifically outlawed and is punishable by death. Extrajudicial, summary or arbitrary executions of suspected Government opponents continue to be reported, with others living under immediate threat. As an example, one list of 154 named prisoners allegedly executed in the course of the "Prison Cleansing Campaign" provides the Special Rapporteur with the charges for which the detainees have been executed. Among these are 24 members of the Da'wa Party, 16 members of the Patriotic Union of Kurdistan, 9 members of the Iraqi National Council and 7 members of the Supreme Council for Islamic Revolution in Iraq.

14. As in previous years, there have been numerous reports that the alleged executions and "Prison Cleansing Campaign" have involved a number of persons sentenced to death for having made an attempt on an official's life or to have plotted against the regime. Examples include the following:

(a) On 8 October, the Special Rapporteur was informed of the execution of 14 officers and party leaders charged with an attempt on Saddam Hussein's life;

(b) The above-mentioned list of 154 executed prisoners includes 4 persons who were said to have made an attempt on Uday Saddam Hussein's life and 9 others who attempted a coup d'etat;

(c) In another list of 23 detainees allegedly sentenced to death, 3 military officers are charged with "manoeuvring" against the regime.

15. As reported in previous reports, army deserters as well as Islamist activists continue to be subjected to the death penalty. On 12 November, it

was reported that six to seven members of the Al-Wahabi Party were executed; the Special Rapporteur has received several lists from various sources indicating the names of the persons executed.

16. The Special Rapporteur notes that members of ethnic minorities continue to be especially at risk. Indeed, several lists indicate that the proportion of members of ethnic minorities reportedly executed in the recent mass executions of prisoners is very high compared with their numbers in Iraqi society. For example:

(a) On 10 September 1997, the Shiite tribe Bani Hjeim reported the execution of 10 of their members while many others remain in jail;

(b) On the list of 23 prisoners referred to above, 11 persons are Kurds affiliated with Kurdish parties;

(c) A third list of 29 Iraqi Turkomans executed by the Government of Iraq in 1997 was also made available to the Special Rapporteur.

17. On the basis of all available information, it is highly probable that more than 1,500 summary, arbitrary or extrajudicial executions for political purposes have been carried out throughout the year, most of them during the "Prison Cleansing Campaign" of November and December 1997.

18. In addition to the mass executions of hundreds of prisoners, the case of four Jordanian nationals executed on 8 December 1997 for having smuggled $850 worth of car parts was revealed to the international community. This case led the Government of Jordan to expel several members of the Iraqi representation in Amman in protest against the executions. Indeed, a letter dated 19 December 1997 from the Permanent Mission of the Kingdom of Jordan to the United Nations Office at Geneva addressed to the Special Rapporteur confirmed the above allegations and protested against the unfair imposition of the death penalty on citizens of a friendly neighbour and on persons whose offence deserves no more than a fine. The Special Rapporteur observes that property crimes under Iraqi laws continue to be punishable by the death penalty - and that such penalties are, indeed, applied and enforced contrary to the previous denials of the Government of Iraq.

B. Forced displacement

19. According to testimonies received, the practice of forced displacement from Kirkuk, Khanaqin and Douz continues to be implemented by the Iraqi authorities. Kurds and Turkomans who settled in these places after the 1950s are the principal victims of this policy. Kurdish and Turkoman families are required to move either to the southern part of the country, often to the city of al-Ramadi, or to the three northern governorates. At the same time, Arabs are reportedly encouraged to settle in Kirkuk; their proportion is increasing. According to the interviewees, Arabs are given incentives of money and apartments to settle in Kirkuk. As such, the Government's policy of Arabization, as reported by the Special Rapporteur in the past, is continuing.

20. Families who are perceived to be opposed to the regime, families who have relatives outside Iraq or in southern Iraq and those who have relatives in detention or executed are said to be the first targeted in the process of forced displacement. According to several persons interviewed, Baath Party members from the local offices of the Baath Party in the city of Kirkuk are responsible for implementing the decision to forcibly remove the targeted families. They are in possession of lists of people living in the neighbourhood under their "jurisdiction". These lists contain information on each household of the neighbourhood. Baath Party members are responsible for implementation of the decisions. Aside from the various human rights which are violated in the process of forced displacement (e.g. the rights to privacy, property, movement and personal integrity), the Special Rapporteur observes that the practice of forced displacement as carried out by the Baath Party is an extralegal use of self-ascribed authority; to the extent that the ostensible authorities permit the practice to occur, the Baath Party and its members are effectively granted impunity.

21. According to testimony received, the following is the typical experience of those families subjected to forced displacement. Once the decision is taken to expel a family, Baath Party members present themselves at the residence of that particular family and order them to leave the area within 24 to 48 hours. In order to ensure that the family will effectively move, Baath Party members usually withhold the identification cards of the members of the family. In some cases a member of the family is put in detention in order to accelerate the process. Once the family is ready to leave their home, they need to pass by the local police station and fill in a form stating that they are voluntarily changing their residence. Their identification cards are only then returned to them and if a member of the family was detained, only then is he or she released.

22. Before moving, families have the possibility to sell their belongings. But very often, due to the very short notice, they leave all their properties behind. Most of the families move to the northern governorates either because they have relatives there or because of the similarity of the languages, cultures and traditions prevailing in that area. Even though families who move to the southern governorates are entitled to take their belongings or to sell them, very few settle in the southern part of the country due to the different culture.

23. Iraqi authorities used to issue a "displacement order" to families who were required to leave. However, it was reported that the Government of Iraq stopped this practice when they learned that the document was being used by asylum seekers outside Iraq as proof of their claims. The following is an example of a forced displacement certificate, dated 21 May 1995, as received by the Special Rapporteur:

"In The Name of Allah, The merciful, The Compassionate
Republic of Iraq

Ministry of Interior
Al-Ta'meem Governorate
Internal Affairs

Ref. No.: K25/4324
Date: 21/5/1995

Sub./Expulsion of Citizens

On the basis of the letter from the Presidency Diwan No. 114531 of 7/3/1987, and the letter from the Ministry of Interior/Secret Communications No. 7KM/84501 of 3/9/1994, and the letter from the Northern Organization Office Secretariat/Secretarial No. S/113 of 21/4/1995, approval has been given to the letter from the High Expatriation Committee No. 17 of 18/5/1995. In accordance with it, the citizens whose names are listed below shall be expelled from Al-Ta'meem Governorate to the Governorates of Arbil and Al-Anbar, with implementation to commence from the date of issuance of the order.

(Signed) Governor of Al-Ta'meem

Copy to/

1. Ministry of Interior/Secret Communications
2. Northern Organization Office Secretariat/Secretarial
3. Branch Expulsion Committees/To begin carrying out the order
4. Directorate of Civil affairs/Al-Ta'meem
5. Central People's Majlis
6. All checkpoints, to facilitate the expulsion operation."

24. Throughout 1997, the Special Rapporteur received numerous reports confirming the allegations of systematic forced displacement. For example, the Special Rapporteur is in possession of a list of 174 Kurdish families composed of 1,129 persons deported on 20 November 1997 from the district of Kirkuk; a second list of 55 families deported on 20 November 1997, which cross-checks with the first one, was received from a different source.

C. Iraq's compliance with the International Covenant on Civil and Political Rights

25. As a State party to the International Covenant on Civil and Political Rights, Iraq submitted its fourth periodic report on its implementation of the Covenant (CCPR/C/103/Add.2). An Iraqi delegation led by Mr. Dhari K. Mahmood, Director-General of the Ministry of Justice, came from the capital and presented the report on 27 October 1997 to the Human Rights Committee. On 27 October 1997, the Human Rights Committee, composed of 18 independent experts elected by the States parties, considered the fourth periodic report of Iraq and subsequently adopted, on 5 November 1997, their concluding observations (CCPR/C/79/Add.2).

26. In its fourth periodic report, Iraq argued that the prevailing tragic economic and social situation was due to the continued imposition of international sanctions and that that explained the appearance of imbalances in social relations and crime proliferation, forcing the Government of Iraq to take punitive action of a deterrent nature. While acknowledging that the effect of sanctions had been to cause suffering and death in Iraq, the Human Rights Committee reminded the Government of Iraq that, whatever the difficulties, the State party remained responsible for implementing its obligations under the Covenant. The Special Rapporteur fully agrees with the view of the Human Rights Committee and he notes, moreover, that most provisions of the Covenant (e.g. freedom from torture, freedom of thought, freedom of expression) have no conceptual or practical link with the existence of economic sanctions.

27. With regard to the content of Iraq's report, the Human Rights Committee regretted that the State party's fourth periodic report did not deal with the actual state of implementation of domestic laws according to the Covenant, nor with the difficulties encountered in the course of their implementation. Rather, it only provided information on Iraq's legislative framework. The Special Rapporteur has previously observed the same emphasis by the Government of Iraq on the ostensible "respect" of its international obligations by reference to legislation. The Special Rapporteur recalls in this connection his previous analysis of the entire politico-legal order in Iraq which shows that a parallel order of arbitrary and authoritarian rule is, in fact, the prevailing regime in Iraq. This analysis has been amply detailed by the International Commission of Jurists in its February 1994 report entitled "Iraq and the Rule of Law".

28. As concerns specific human rights violations, the Human Rights Committee expressed its deep concern about the unclear separation between the executive, legislative and judicial powers in Iraq which was, according to the members of the Committee, the fundamental cause of such violations. Sharing the same viewpoint, the Special Rapporteur concluded in his report submitted on 6 February 1997 to the Commission on Human Rights that "a significant change in the situation of human rights in Iraq will only be possible through a radical change in the politico-legal order" (E/CN.4/1997/57, para. 43).

29. With regard to the executive power, the Human Rights Committee expressed its special concern that "all government power in Iraq is concentrated in the hands of one executive which is not subject to scrutiny or accountability, either politically or otherwise. It operates without any safeguards or checks and balances designed to ensure the protection of human rights and fundamental freedoms in accordance with the Covenant. This appears to be the most significant factor underlying many violations of the Covenant rights in Iraq, both in law and in practice" (CCPR/C/79/Add.84, para. 7).

30. Concerning the legislative power, the Human Rights Committee referred expressly to "article 42 of the Constitution [which] gives power to the Revolution Command Council to issue laws, decrees and decisions without being subject to independent scrutiny or review to ensure their compliance with the provisions of the Covenant" (ibid., para. 19). It is clear that those whose rights may have been violated by such laws, decrees or decisions have no effective remedy as required by article 2, paragraph 3, of the Covenant.

31. As concerns the democratic legitimacy of the members of the Revolution Command Council acting as a legislative body, they are not elected by universal and equal suffrage under article 38 (c) of the provisional Constitution of Iraq. Accordingly, the exercise of legislative power by them is incompatible with the right of citizens to take part in the conduct of public affairs, under article 25 (a) and (b) of the Covenant, either directly or through freely chosen representatives.

32. Regarding the judicial system, the Human Rights Committee observed that "special courts, which may impose the death penalty, do not provide for all procedural guarantees required by article 14 of the Covenant, and in particular the right of appeal. ... in addition to the list of offences which are under the jurisdiction of the special courts, the Minister of the Interior and the Office of the President of the Republic have discretionary authority to refer to any other cases to these courts" (ibid., para. 15). Accordingly, the Committee recommended that "courts exercising criminal jurisdiction should not be constituted other than by independent and impartial judges, in accordance with article 14, paragraph 1, of the Covenant". Otherwise, the judicial system is incapable of dispensing independent and impartial justice which takes into account the full rights of the citizens. In addition, the Human Rights Committee continued, "the jurisdiction of such courts should be strictly defined by law and all procedural safeguards protected by article 14, including the right of appeal, should be fully respected" (ibid.). Otherwise, flagrant interference of the executive power with the sphere of legislative power could occur. In fact, as the Special Rapporteur has previously reported, this is exactly the case in Iraq.

33. In its official response to the interim report of the Special Rapporteur on the situation of human rights in Iraq, dated 14 November 1997 (A/C.3/52/7), the Government of Iraq argued that the conclusion that the exercise of legislative, executive and judicial powers was not in conformity with the international instruments was "absolutely unacceptable and constitute[d] blatant interference in purely internal affairs and the framing of charges in a random and biased manner" (p. 4). However, the Iraqi political structure is the most significant factor underlying human rights violations. In addition, the Special Rapporteur reminds the Government of Iraq that, as a State party to several international human rights treaties including the Charter of the United Nations, it is responsible for implementing the provisions of these instruments.

34. With regard to the freedom of expression, the right to express opposition to or criticism of the Government or its policies is severely restricted, regardless of the requirements of article 19 of the Covenant. For example, Iraqi law imposes life imprisonment and, in certain cases, death on anyone insulting the President. In this connection, the aforementioned official response of the Government of Iraq draws a line between "criticism" and "insult" - the death penalty being only prescribed for the latter. The Special Rapporteur finds this distinction neither convincing in theory nor reflective of the factual situation in Iraq. The Special Rapporteur agrees with the Human Rights Committee when it noted with concern that the law imposed severe punishments for vaguely defined crimes which were open to wide interpretation by the authorities. This is to say nothing of the serious deficiencies with respect to due process of law in Iraq.

35. As far as the freedom of the press is concerned, the Human Rights Committee expressed concern about "prohibitions and censorship imposed on the creation and functioning of independent broadcasting media, as well as on the dissemination and broadcasting of foreign media, which are not in conformity with the requirements of article 19, paragraphs 2 and 3 of the Covenant" (ibid., para. 17). Accordingly, the press cannot function in Iraq as a check or balance on the three institutional powers of Government.

36. Concerning the freedom of movement, the Human Rights Committee regretted that arbitrary restrictions on the right to freedom of movement within Iraq and freedom to leave the territory of Iraq were in breach of Iraq's obligations under article 12 of the Covenant. The Special Rapporteur observes that there is no explanation for the maintenance of such severe restrictions on freedom of movement in Iraq, other than the Government's desire to control the population.

37. According to the Human Rights Committee, numerous decrees and laws continue to adversely affect the situation of civil and political rights in Iraq. Indeed, decrees recently enacted by the Revolution Command Council are incompatible with the right to life, the prohibition of torture and the principle of non-retroactivity of criminal laws. In addition, the categories of crimes punishable by the death penalty are still increasing pursuant to Revolution Command Council Decree No. 115 of 25 August 1994 in violation of the provisions of article 6, paragraph 2, of the Covenant by stipulating that the death penalty will be imposed on persons who have evaded military service several times. Moreover, cruel, inhuman and degrading punishments, such as amputation and branding, remain in force in blatant contradiction of article 7 of the Covenant. Concerning this issue, the Iraqi delegation before the Human Rights Committee argued that in the prevailing precarious situation faced by Iraq, these forms of punishments were exceptional measures needed to deter crime. But, in the view of the experts of the Human Rights Committee, no increase in criminality could justify flagrant violations of human rights. In the view of the Special Rapporteur, the spurious and unacceptable argument about crime prevention only serves to underline the terrorizing effect of such barbarous punishments of disfigurement. Indeed, even to contemplate, much less defend, such punishments speak volumes about the attitude of the Government of Iraq towards human rights in general.

38. Where the principle of gender equality is concerned, the continued operation of discriminatory family and inheritance laws are incompatible with articles 2 (1), 3, 23 and 26 of the Covenant.

39. As far as the rights of minorities are concerned, members of religious and ethnic minorities as well as other groups continue to fear discrimination in Iraq, in particular the Shiites in the Southern Marshes and the Kurds. Furthermore, the Committee regretted the lack of information concerning other minorities.

40. The Special Rapporteur notes that the Human Rights Committee also expressed regret that so many of their questions remained unanswered by the Government of Iraq notwithstanding the seriousness of the allegations and issues. In particular, the high incidence of summary executions, arbitrary arrests and detention, torture and ill-treatment by members of security and

military forces, disappearances of many named individuals and of thousands of people in the Southern Marshes and forced relocations were matters which went unanswered by the Government of Iraq. The Special Rapporteur recalls that this, too, was his experience prior to the Government of Iraq simply cutting off its contacts with the Special Rapporteur.

41. As concerns the establishment of a non-governmental committee dealing with disappearances, no information was given on its functioning. The Human Rights Committee, sharing the Special Rapporteur's request, recommended that all allegations be fully, publicly and impartially investigated. In the above-mentioned official response to the latest interim report of the Special Rapporteur, the Government of Iraq attributed its rejection of the proposal of assigning human rights monitors to a purported and nebulous infringement of the security, sovereignty and independence of Iraq. However, the Special Rapporteur notes that, given the continuous allegations of repeated human rights violations in Iraq despite Iraq's numerous international obligations, the above recommendation of full, public and impartial investigation expressed by the Human Rights Committee could only be carried out by independent, impartial and secure United Nations human rights monitors as recommended by the Special Rapporteur in his previous reports.

III. ECONOMIC AND SOCIAL RIGHTS

A. The rights to food and health care

42. Prior to the Gulf War in 1990, Iraq had one of the highest per capita food availabilities in the region, due especially to its capacity to import large quantities of food which met up to two thirds of food requirements. During that time, the estimated cost of food imports averaged around $2 billion per year, though in years of poor domestic production the import bill could rise to $3 billion.

43. Since the imposition of international sanctions in August 1990, the Government of Iraq decided not to take advantage of Security Council resolutions 706 (1991) and 712 (1991) which had been adopted within months of the international community understanding the specific needs of the Iraqi people; these Security Council resolutions allowed Iraq to sell every six months $1.6 billion worth of oil with the aim of importing humanitarian supplies. Instead, the Government of Iraq decided to rely only on domestic production to meet the humanitarian needs of its people - preferring to let innocent people suffer while the Government manoeuvred to get sanctions lifted.

44. Accordingly, the situation deteriorated and has remained precarious for several years. Beggars, street children and undernourished children in hospitals have been widely seen throughout the whole country in spite of the public rationing system which provided some 1,295 Kcal/capita/day before the implementation of the enhanced "oil-for-food" agreement pursuant to Security Council resolution 986 (1995).

45. Concerning water availability in its widest sense, surveys conducted by UNICEF and WHO reveal serious problems especially in rural areas. Only 50 per cent of the rural population has access to a water supply from a

network compared with 96 per cent of people living in towns and cities. In addition, much of the supplied water was contaminated or below acceptable standards. Such lack of water and sanitation has a direct link with the prevalence of infantile malnutrition and the spread of diseases.

46. On 14 April 1995, the Security Council adopted resolution 986 (1995) which reiterated and expanded the oil-for-food option aimed at meeting the humanitarian needs of the Iraqi population. However, due to Iraq's procrastination, a memorandum of understanding for the implementation of Security Council resolution 986 (1995) was signed between the Government of Iraq and the United Nations only on 20 May 1996, that is to say more than one year after the adoption of the resolution. The total amount of food to be purchased for the first six-month period under Security Council resolution 986 (1995) amounted to $805 million.

47. Following the adoption of Security Council resolutions 986 (1995) and 1111 (1997), there has been some improvement in the overall food supply situation. As at 15 November 1997, about 2,690,000 tons of food and related items totalling $910,138,000 had arrived in-country, increasing the average level of energy provided by the rations from 1,295 Kcal/capita/day to 2,030 Kcal/capita/day. Moreover, the food intake increased from 2,268 Kcal/capita/day in 1993-95 to 2,424 Kcal/capita/day in 1997/98.

48. On 28 November 1997, the United Nations Secretary-General reported on the implementation of the "oil-for-food" agreement (S/1997/935). According to the Secretary-General, United Nations humanitarian observers had reported that they continued to be granted access to facilities and records on request. They had enjoyed movement throughout the country upon request. However, they also continued to report frustration expressed by the beneficiaries owing to the low quality and quantity of some foodstuffs, and the continuing shortage of medicines, education supplies and electricity. The Secretary-General concluded: "I regret to report that, despite the ongoing implementation of resolutions 986 (1995) and 1111 (1997), the population of Iraq continues to face a serious nutritional and health situation and there is an urgent need to contain the risk of further deterioration" (paragraph 84).

49. Of special importance was an FAO/WFP special report entitled "FAO/WFP food supply and nutrition assessment mission to Iraq" dated 3 October 1997 which concluded that the food ration allocated under Security Council resolutions 986 and 1111 was unbalanced and insufficient to rapidly reverse the serious nutritional consequences of the supply shortages which had been experienced over the last seven years. This conclusion motivated a new calculation of what would be necessary to rapidly reverse the nutritional consequences of the Government's refusal for so many years to accept and implement the "oil-for-food" arrangement.

50. With respect to health care, the Secretary-General reported an exceptionally serious deterioration in the health infrastructure hampering the benefits of new equipment and other inputs under resolution 986 (1995). WHO conducted a survey in early November 1997 showing that out of the 96 per cent of patients interviewed for whom treatment had been prescribed, only 39 per cent had received all the prescribed drugs and for 28 per cent of them the prescribed drugs were not available in the health facilities visited.

51. Accordingly, the Secretary-General concluded in his report that "the current food ration of 2,030 kilocalories and in particular, its composition fall far short of meeting the nutritional needs of the Iraqi population. This is particularly valid since nutritional security is contingent upon a host of interrelated factors, such as safe water and available medicine, which are grossly inadequate at the moment. The current ration, even if it is distributed completely and in a timely manner, cannot address the chronic malnutrition and energy deficiency in adults. In order to improve the current serious situation, an enhanced ration is required" (paragraph 70).

B. The rights of the child

52. The most alarming situation is the food situation affecting children. Indeed, on 26 November 1997, UNICEF revealed in a communiqué that 32 per cent of children under the age of five, some 960,000 children, are chronically malnourished and 23 per cent are underweight. According to Philippe Heffinck (the UNICEF representative in Baghdad who issued the communiqué), no sign of any improvement in the food situation of children has been noticed to date since Security Council resolution 986 (1995) came into force. On the contrary, badly hit areas such as the Governorate of Missan showed chronic malnutrition in almost 50 per cent of the children. Mr. Heffinck concluded in the communiqué that it was clear that children were bearing the brunt of the current economic hardship and that they must be protected from the impact of sanctions, otherwise they would continue to suffer, which would be unacceptable.

53. In the education sector, about 25 per cent of children are absent from primary school. Indeed, only 68 per cent of six-year-olds actually entered school in 1996, with a large disparity between rural and urban areas. In addition, in mid-1997, UNICEF conducted an infrastructure survey revealing that the conditions of education are deplorable.

54. Accordingly, UNESCO Director-General Federico Mayor declared on 28 January 1998 that he was concerned about the growing number of children who no longer went to school and were condemned to eke out a living. He concluded by addressing an appeal to the international community so that the children of Iraq would not be forced to choose between school and the street, so that they would not have to pay for the mistakes made by adults.

55. With regard to disparities between rural and urban areas, children in rural areas are more disadvantaged than those in urban settings. This is particularly evident in access to safe water and safe sanitation. Furthermore, immunization rates are 10 to 15 per cent lower in rural areas. Similar gaps exist for primary school entry and school enrolment. In 1996, 53 per cent of six-year-old rural children entered school whereas 75 per cent entered school in urban areas.

56. The Special Rapporteur is also concerned about evident disparities in the levels and extent of education enjoyed by girls and boys. More boys enrol in school initially, while more girls drop out of schools at different levels. In 1994/95, 85.4 per cent of girls enrolled in school compared with 94.5 per cent of boys. In rural areas where the gap is even more evident, 40 per cent of girls aged between 12 and 14 attended school in 1995/96

compared with 67 per cent of boys in the northern governorates. Among 14-year-olds, 13 per cent of girls attended school compared with 66 per cent of boys. Moreover, there is an increasing rate of illiteracy, especially among women in rural areas. Irrespective of the causes of these disparities, the Government of Iraq should take steps to redress the problem, in particular to ensure literacy among young women and more generally to encourage girls and young women to attend and remain in school.

57. Concerning the reported increase in child labour, the Special Rapporteur regrets that the authorities have taken no measure to address this problem, such as the lack of information or any inspection mechanisms in place to survey the implementation of Labour Act No. 71 of 1987 regulating the protection of young persons with regard to employment and conditions of work. Moreover, children employed in family undertakings under the authority of the father, mother or brother are not protected by the specific provisions of the Labour Act. The Special Rapporteur notes that there is an increasing problem of juvenile delinquency, with juvenile court cases increasing from 2,600 in 1991 to 4,420 in 1996.

C. Iraq and the International Covenant on Economic, Social and Cultural rights

58. On 20 and 21 November 1997, at its seventeenth session, the Committee on Economic, Social and Cultural Rights examined the third periodic report of Iraq on its compliance with the provisions of the International Covenant on Economic, Social and Cultural Rights (E/1994/104/Add.9). On 4 December 1997, the Committee adopted its concluding observations on the report (E/C.12/1/Add.17).

59. The Committee expressed concern about the deteriorating situation of economic, social and cultural rights in Iraq and noted that sufficient measures had not been taken to date by the authorities to alleviate the extremely difficult living conditions of the Iraqi population and the deprivation of their basic economic, social and cultural rights. Accordingly, the Committee recommended that the Government of Iraq take all necessary measures, to the maximum extent of its available resources, to address the needs of the population, and in particular the most vulnerable groups such as children, the elderly and nursing mothers, with respect to article 12 of the Covenant.

60. As a general matter, the Committee regretted the lack of statistical information on the situation of economic, social and cultural rights in Iraq and on any measures taken to spread awareness of human rights.

61. The Committee expressed concern about reports of discrimination against members of certain minorities, especially the Kurds, Marsh people, Assyrians, Shi'a Muslims and Turkomans.

62. With respect to gender equality, while the Committee noted with satisfaction the existence of laws to promote women, it expressed concern about discrimination against women, in law and in practice, concerning inheritance rights, freedom of movement, family law, equal remuneration for equal work, and access to employment.

63. The Committee expressed its concern about the possibility, under Law No. 104 of 1981 and the Penal Code, to condemn a person to compulsory labour as part of a prison sentence in cases of expression of political opinions or ideological opposition to the political, social or economic system, for breach of labour discipline or participation in strikes.

64. In relation to the rights to work and to organize labour, the Committee observed that independent trade unions were not allowed in Iraq since the 1987 Trade Union Organization Law established a single trade union structure controlled by the ruling Baath Party. In addition, the aforementioned law did not recognize the right to bargain collectively and the right to strike was severely restricted.

65. The Committee expressed concern that under section 38 (b)(ii) of the Workers' Pension and Social Security Law No. 39 of 1971, the payment of compensation abroad to an Arab citizen will only be ensured if he returned to his country of origin at the end of his insured period of service. The Committee also noted that, in accordance with section 38 (b)(iii) of the Law, payment of benefits was made outside Iraq only under reciprocity agreements or international labour conventions, and were subject to authorization under Instruction No. 2 of 1978 regarding the payment of social security pensions to insured persons leaving Iraq. Due to the current situation, such payments had been completely suspended.

66. With respect to the right to adequate housing, the Committee expressed concern about reports of discrimination in the enjoyment of this right, especially in relation to forced relocations of members of certain minorities.

67. At the same session during which the Committee considered the latest report by Iraq, the Committee also adopted on 12 December 1997 general comment No. 8 (E/C.12/1997/8) on the relationship between economic sanctions and respect for economic, social and cultural rights. The general comment is of special interest. It emphasizes that, whatever the circumstances, economic sanctions should always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights and those provisions of the Charter of the United Nations that relate to human rights (Articles 1, 55 and 56). At the same time, the Committee comments vis-à-vis the obligations of the affected State as follows:

> "... The imposition of sanctions does not in any way nullify or diminish the relevant obligations of the State party. As in other comparable situations, those obligations assume greater practical importance in times of particular hardship. The Committee is thus called upon to scrutinize very carefully the extent to which the State concerned has taken steps 'to the maximum of its available resources' to provide the greatest possible protection of the economic, social and cultural rights of each individual living within its jurisdiction. While sanctions will inevitably diminish the capacity of the affected State to fund or support some of the necessary measures, the State remains under an obligation to ensure the absence of discrimination in relation to the enjoyment of these rights, and to take all possible measures, including

negotiations with other States and the international community, to reduce to a minimum the negative impact upon the rights of vulnerable groups within the society" (E/C.12/1997/8, para. 10).

D. Iraq's responsibilities

68. The Special Rapporteur recalls that whatever the difficulties, the Government of Iraq remains responsible for implementation of its obligations relating to the rights to food and health care to the maximum of its available resources. Indeed, had the Government of Iraq not waited five years to decide to accept the "oil-for-food" agreement proposed as early as 1991 in Security Council resolutions 706 (1991) and 712 (1991) to meet the humanitarian needs of the population, millions of innocent people would have avoided serious and prolonged suffering. For example, in its above-noted communiqué, UNICEF reported a rise since 1991 of 72 per cent with regard to the malnutrition of children under the age of five.

69. Furthermore, the Special Rapporteur notes with deep concern reports stating that the effect of the embargo is harsher on members of ethnic and religious minorities, and that there exists discrimination in the allocation by the authorities of the limited resources available between rural and urban areas, and against the southern region with respect to the Marsh people.

70. While the Special Rapporteur is aware of the slowness of United Nations procedures for processing purchase contracts, the Government of Iraq also has responsibility to assist the approval process. A WHO report dated November 1997 entitled "Processing of health contracts concluded by Iraq under Security Council resolution 986: a critical analysis" states that a failure to prioritization contracts concluded by Iraq with suppliers lead to a lack of coordination with respect to supplies in the country. Moreover, problems in concluding contracts often arose such as incomplete documentation, duplication and errors in contracts. Delays also occurred in the transmission of concluded contracts as well as in the response from Iraq to queries raised by Security Council members.

71. Although the Government of Iraq shows concern about the humanitarian situation of the people, it nevertheless stopped pumping oil between 8 June and 13 August 1997, awaiting submission and approval by the Secretary-General of the distribution plan of Phase II. Furthermore, Iraq suspended oil sales for a second time between 5 December 1997 and 6 January 1998 for the same reasons. These disruptions in oil sales unilaterally decided by the Government of Iraq resulted in further delays in the arrival of humanitarian supplies. On 5 February 1998, the Minister for Foreign Affairs of the Republic of Iraq addressed a letter to the Secretary-General (S/1998/104) in which he dismissed the responsibility of the Government of Iraq for the delays, arguing that resolution 986 (1995) provided that the oil sales should begin on the date on which the Secretary-General informed the Government of Iraq that he approved the purchase and distribution plan and not when the resolution extending the memorandum of understanding is adopted.

72. The Special Rapporteur notes that rather than taking every opportunity to facilitate the distribution plan in order to alleviate the suffering of the Iraqi population, the Government of Iraq insists upon arguing about procedural mechanisms.

73. On 1 February 1998, the Secretary-General had submitted a report on the implementation of the humanitarian programme for Iraq to the Security Council (S/1998/90). In his report he recommended that a single "ongoing" distribution plan be developed for the oil-for-food programme in order to avoid such disruption in oil sales whenever Iraq submitted a distribution plan at the beginning of each new phase of the programme. Furthermore, the Secretary-General called for an increase in the level of permitted Iraqi oil revenues to $5,206,000,000 for a six-month period instead of $2 billion.

74. In response to the initiative of the Secretary-General, the Government of Iraq reacted by issuing a lengthy rejection of many elements of the proposal (S/1998/104). In particular, the Government of Iraq categorically refused to endorse any plan for the distribution of increased income "if it is prepared by any party other than Iraq". At the same time, the Government expressed its refusal to be held responsible for any problems of implementation, including suspensions in oil sales which it unilaterally ordered. Furthermore, the Government of Iraq rejected the recommendation of the Secretary-General of a single ongoing distribution plan which could be amended, arguing that the memorandum of understanding provided for an arrangement which was an exceptional and temporary measure. The Government of Iraq also insisted that all additional revenue earned from an increase in the oil-for-food programme go directly to humanitarian relief efforts with no part of the funds raised to be allocated for costs, Iraqi compensation of war victims or other stipulated payments.

75. The Special Rapporteur notes that the Government of Iraq systematically refers to the degradation of the country's infrastructure due to the embargo to avoid fulfilling its economic, social and cultural obligations, yet in its reply to the Secretary-General's report of 1 February 1998 the Government of Iraq nevertheless rejected most of the Secretary-General's proposals for projects in the areas of health, food, agriculture, water, sanitation, education, resettlement, demining and electricity. Its refusals to cooperate on the elaboration of a distribution plan, to plan it on an ongoing basis and to assure uninterrupted sales of oil all contribute to undermining the effective implementation of the oil-for-food arrangement, to the detriment of those in need.

76. The Special Rapporteur is concerned about the disparities between rural and urban areas with regard to the rights to food, health care and education. It is worth recalling that 50 per cent of the rural population in the central and southern parts of Iraq have no access to potable water supplies. This figure increases to 90 per cent in the Governorate of Thigar. These obvious regional disparities strongly suggest that the distribution plan under the oil-for-food arrangement should be differentiated according to real needs, i.e. that greater assistance should go to the most vulnerable, as is the intention of the arrangement. In this connection, the Special Rapporteur observes that insistence on a strictly equal system of distribution, largely

devised and entirely administered by the Government of Iraq, is ultimately unequal in its effects since it fails to take account of real differences in the needs of people.

77. With respect to the problem of landmines, the Special Rapporteur notes that the Government of Iraq continues to ignore this problem and reject the help proffered by the United Nations. It is of interest to note that landmines pose a great risk to persons in the three northern governorates from which the Government of Iraq withdrew its administration in October 1991. Since 1992, landmines placed previously by government forces have caused more than 15,000 casualties of which 30 per cent are children.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

78. During 1997, the situation of human rights in Iraq did not improve. To the contrary, based on the numerous and serious allegations of human rights violations received throughout this last year, the Special Rapporteur concludes that the situation of human rights has rather deteriorated. Summary and extrajudicial executions continue to take place in Iraqi prisons at a reportedly increased pace. The policy of forced displacements of civilians of Turkoman and Kurdish origins continues to be implemented in the cities of Kirkuk, Khanakin and Douz. Basic civil and political rights such as freedom of assembly, expression and movement are severely restricted when not forbidden.

79. During the last year, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights considered the reports of Iraq on the implementation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, respectively.

80. The Human Rights Committee remained deeply concerned that in Iraq there was no clear separation between the executive, legislative and judicial powers. This confusion between the three institutional powers is at the root of violations of civil and political rights in Iraq. In this regard the Committee reached the same conclusions as already expressed by the Special Rapporteur on numerous occasions, i.e. that all government power in Iraq is concentrated in the hands of one executive, namely President Saddam Hussein, who is not subject to scrutiny or accountability and who operates without safeguards or checks and balances designed to ensure the protection of human rights and fundamental freedoms.

81. The Committee on Economic, Social and Cultural Rights expressed concerns about the deteriorating situation of economic, social and cultural rights in Iraq. The Committee noted, inter alia, reports of discriminations against members of certain minorities (the Kurds, the Marsh people, the Assyrians, the Shi'a Muslims and the Turkomans) with respect to their enjoyment of fundamental rights as reflected in the Covenant. With regard to gender equality, the Committee expressed concern about discrimination against women, both in law and in practice. Here again, the Committee on Economic, Social and Cultural Rights reached the conclusion already expressed by the Special

Rapporteur, i.e. that sufficient measures had not been taken to date by the authorities to alleviate the extremely difficult living conditions of the Iraqi population and the deprivation of their basic economic, social and cultural rights.

82. This year again, the Government of Iraq dismissed the conclusions reached by the Special Rapporteur as well as by both United Nations committees. Indeed, the Government has maintained that the situation of human rights is exemplary and that Iraq is pursuing a serious policy to enhance respect for human rights. When admitting that in particular areas human rights violations might have occurred, the Government attributes the entire responsibility to the international sanctions imposed on Iraq. In other words, the Government of Iraq rejects responsibility for any human rights violations.

83. The Special Rapporteur also notes that the Government of Iraq is still refusing to cooperate with him with a view to assessing the allegations received. Indeed, with regard to the allegations of summary executions in Iraqi prisons, the Special Rapporteur on the situation of human rights in Iraq together with the Special Rapporteur on extrajudicial, summary or arbitrary executions of the Commission of Human Rights are still awaiting a reply to the letter they sent on 29 December 1997 to the Government of Iraq. Furthermore, the Government of Iraq is still rejecting the recommendation of the Commission on Human Rights for the sending of human rights monitors to such locations as would facilitate improved information on the situation of human rights in Iraq. Surely, if there is doubt about the validity of the conclusions reached by the Special Rapporteur, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, and if the Government of Iraq is so sure that there are no problems of human rights in Iraq for which it is responsible, it should have no difficulty in accepting the stationing of independent and impartial United Nations human rights monitors throughout Iraq.

84. With regard to the humanitarian situation in Iraq, the Special Rapporteur welcomes the adoption of Security Council resolution 1153 (1998) of 20 February 1998. He notes that for not having resorted to the oil-for-food formula for a period of five years the Government of Iraq was already responsible for the degradation of the humanitarian situation in Iraq. Rejecting the positive recommendations formulated by the Secretary-General in his report of 1 February 1998 (S/1998/90) will, without doubt, not alleviate the suffering of the Iraqi people and will increase Iraq's responsibility in the further deterioration of the humanitarian situation in the country.

B. Recommendations

85. The Special Rapporteur recommends that the Government of Iraq act immediately to bring to an end summary or arbitrary executions, arbitrary arrests and detention, torture and ill-treatment by members of security and military forces, disappearances of many named individuals and of thousands of people in northern Iraq and in the southern marsh area, together with forced relocations, and that the persons responsible for those acts be brought to justice without delay.

86. Furthermore, the Special Rapporteur recommends that all Iraq's laws and policies be brought into conformity with its international obligations, in particular those contained in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which Iraq has freely signed and ratified.

87. With regard to the rights to food and health care, the Government of Iraq should take all necessary measures, to the maximum extent of its available resources, to address the needs of the population, and in particular the most vulnerable groups such as children and the elderly. In this regard, the Special Rapporteur urges the Government of Iraq to comply without delay with Security Council resolution 1153 (1998) and to cooperate with the Secretary-General, taking into account his recommendations aimed at enhancing the efficiency and adequacy of the distribution plan. In this connection, the Government of Iraq should cooperate with the Secretary-General in devising a distribution plan which differentiates on the basis of the real needs of the most vulnerable and, in so doing, allows for adequate food and medicines to flow to the intended beneficiaries.

88. The Special Rapporteur reiterates again his recommendation that United Nations human rights monitors should be sent to such locations, including throughout Iraq, where they could receive and verify information on the situation of human rights in Iraq.